



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Office of the District Attorney
Tarrant County, Texas
401 W. Belknap
Fort Worth, Texas 76196-0201

OR96-1625

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 100182.

The Tarrant District Attorney's Office received a request for "a copy of the file regarding Automatic Bail Bonds Company" (the "company"). You contend, initially, that the requested information need not be released because the Tarrant County Bail Bond Board (the "board"), upon whose behalf you claim to make this request for a ruling, is not a governmental body subject to the act. You claim, alternatively, that the requested information should be protected from disclosure under sections 552.101 and 552.111 of the Government Code.

Initially, we reject your contention that the board is not a "governmental body" as defined by the act. Section 552.003(1)(A)(i) provides that a "board . . . that is within or is created by the . . . legislative branch of state government and that is directed by one or more elected or appointed members" is a governmental body. The board was created by the legislature¹ and is directed by one or more elected members.² Thus, the board is a

¹Acts 1973, 63rd Leg., p. 1520, ch. 550, eff. Aug. 27, 1973.

²Art. 2372p-3 § 5(b), V.T.C.S., provides that the board shall include "(6) a licensed bondsman, licensed in the county, *elected* by other county licensees" (emphasis added).

governmental body and its records may be subject to public disclosure under the act. Consequently, we must address the exceptions to public disclosure which you have raised.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the requested information includes "personal information" about the owner of the company and her family, the release of which would violate the owner's common-law right of privacy. Information must be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 1 of article 2372p-3, V.T.C.S., provides that "[t]he business of executing bail bonds is declared to be a business affecting the public interest." Additionally, all the requested information appears to have been required to be filed with the board pursuant to article 2372p-3. Thus, we need not decide whether any of the information held by the board is highly intimate or embarrassing because it is of legitimate concern to the public. *See Apodaca v. Montes*, 606 S.W.2d 734 (Tex. Civ. App.—El Paso 1980, no writ) (constitutional right of privacy does not protect personal financial information held by bail bond board). We conclude that none of the information requested may be withheld under the common-law right to privacy.³

However, the information submitted to this office includes criminal history record information ("CHRI") that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the Department of Public Safety ("DPS") or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI

³In addition, pursuant to section 552.305 of the Government Code, this office notified the owner of the bail bond company of the open records request and provided her with an opportunity to submit in writing to this office her reasons why the information should be withheld or released. To date, we have received no correspondence from the owner arguing against the release of the requested information. Because the owner has not submitted any arguments or information to establish that the requested information is excepted from disclosure, we assume that she has no privacy or proprietary interest in the requested information.

generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have tagged the document containing CHRI which must be withheld from public disclosure under section 552.101 of the Government Code.

In addition, the information submitted to this office also contains information acquired from a polygraph examination. Section 19A(b) of article 4413(29cc), V.T.C.S., provides in pertinent part:

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Subsection (d), which specifies persons to whom information acquired from a polygraph examination may be disclosed, does not appear to be applicable to this request. This office has determined that the phrase, "information acquired from a polygraph examination," in section 19A(b) embraces the notes, records, and examination records of a polygraph examination given a police officer. *See* Open Records Decision No. 316 (1982) at 2. Furthermore, that phrase also applies to the written or printed results of the full examination, including all questions asked and those marked as control questions. *See* Open Records Decision No. 430 (1985) at 5. We have marked the information contained in the investigative report and the polygraph examination which we believe is "information acquired from a polygraph examination." This information must be withheld under section 552.101 in conjunction with section 19A(b) of article 4413(29cc), V.T.C.S.

You also raise section 552.111 in regard to the polygraph examination. Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* We do not believe that section 552.111 is applicable to the polygraph examination or its results and, consequently, may not be relied upon as a basis for withholding any portion of the examination or its results.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is fluid and cursive, with the first name "Todd" and last name "Reese" clearly legible.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100182

Enclosures: Marked documents

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